

CRAWFORD BENSON, )  
 )  
 Plaintiff, )  
 )  
 v. ) No. 1:14CV168 ACL  
 )  
 DUNKLIN COUNTY, )  
 )  
 Defendant. )

This matter is before the Court upon the motion of Crawford Benson (registration no. 174094), an inmate at Eastern Reception Diagnostic and Correctional Center, for leave to commence this action without payment of the required filing fee. For the reasons stated below, the Court finds that plaintiff does not have sufficient funds to pay the entire filing fee and will assess an initial partial filing fee of \$0.45. See 28 U.S.C. § 1915(b)(1). Furthermore, based upon a review of the complaint, the Court finds that the complaint should be dismissed pursuant to 28 U.S.C. § 1915(e)(2)(B).

Pursuant to 28 U.S.C. § 1915(b)(1), a prisoner bringing a civil action in forma pauperis is required to pay the full amount of the filing fee. If the prisoner has insufficient funds in his or her prison account to pay the entire fee, the Court must assess and, when funds exist, collect an initial partial filing fee of 20 percent of the greater of (1) the average monthly deposits in the prisoner's account, or (2) the average monthly balance in the prisoner's account for the prior six-month period. After payment of the initial partial filing fee, the prisoner is required to make monthly payments of 20 percent of the preceding month's income credited to the prisoner's account. 28 U.S.C. § 1915(b)(2). The agency having custody of the prisoner will forward these

monthly payments to the Clerk of Court each time the amount in the prisoner's account exceeds \$10, until the filing fee is fully paid. Id.

Plaintiff has submitted an affidavit and a certified copy of his prison account statement for the six-month period immediately preceding the submission of his complaint. A review of plaintiff's account indicates an average monthly deposit of \$2.25, and an average monthly balance of \$0.00. Plaintiff has insufficient funds to pay the entire filing fee. Accordingly, the Court will assess an initial partial filing fee of \$0.45, which is 20 percent of plaintiff's average monthly deposit.

### **28 U.S.C. § 1915(e)**

Pursuant to 28 U.S.C. § 1915(e)(2)(B), the Court must dismiss a complaint filed in forma pauperis if the action is frivolous, malicious, fails to state a claim upon which relief can be granted, or seeks monetary relief from a defendant who is immune from such relief. An action is frivolous if it "lacks an arguable basis in either law or fact." Neitzke v. Williams, 490 U.S. 319, 328 (1989); Denton v. Hernandez, 504 U.S. 25, 31 (1992). An action is malicious if it is undertaken for the purpose of harassing the named defendants and not for the purpose of vindicating a cognizable right. Spencer v. Rhodes, 656 F. Supp. 458, 461-63 (E.D.N.C. 1987), aff'd 826 F.2d 1059 (4th Cir. 1987). A complaint fails to state a claim if it does not plead "enough facts to state a claim to relief that is plausible on its face." Bell Atlantic Corp. v. Twombly, 550 U.S. 544, 570 (2007).

### **The Complaint**

Plaintiff brings this action under 42 U.S.C. § 1983 against Dunklin County, Missouri. The complaint is somewhat incoherent, but the Court gives it a liberal construction. Plaintiff alleges that Dustin Crawford, who might be a police officer, planted an illegal listening device in his house on January 16, 2013. Plaintiff further alleges that Crawford came onto his property

every morning at 2:30 a.m. for two months to take pictures of his car and its contents. Plaintiff says Crawford was trying to charge him with burglary. Plaintiff also claims that Crawford stole his kitchen table while he was detained in jail.

Plaintiff asserts that he fell in the shower and injured his right hip. He does not say whether he was detained at the time. He claims he went home after getting his medications. No individuals are named as being responsible for his medical problems.

Plaintiff says he was subjected to double jeopardy and was forced to pay bail twice.

### **Discussion**

To state a claim against a municipality or a government official in his or her official capacity, plaintiff must allege that a policy or custom of the government entity is responsible for the alleged constitutional violation. Monell v. Dep't of Social Services, 436 U.S. 658, 690-91 (1978). The instant complaint does not contain any allegations that a policy or custom of Dunklin County was responsible for the alleged violations of plaintiff's constitutional rights. As a result, the complaint fails to state a claim upon which relief can be granted.

Section 1983 imposes liability on state actors. Plaintiff has not stated who Dustin Crawford is or whether he is a state actor. Nor has he named him as a defendant. Therefore, the Court will not construe this action to state a claim against Crawford.

Plaintiff's other allegations completely vague and do not contain enough facts to give rise to a plausible claim for relief.

Accordingly,

**IT IS HEREBY ORDERED** that plaintiff's motion to proceed in forma pauperis [ECF No. 2] is **GRANTED**.

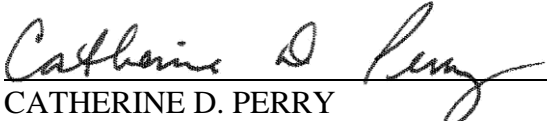
**IT IS FURTHER ORDERED** that the plaintiff shall pay an initial filing fee of \$0.45 within thirty (30) days of the date of this Order. Plaintiff is instructed to make his remittance

payable to "Clerk, United States District Court," and to include upon it: (1) his name; (2) his prison registration number; (3) the case number; and (4) that the remittance is for an original proceeding.

**IT IS FURTHER ORDERED** that this action is **DISMISSED** pursuant to 28 U.S.C. § 1915(e)(2)(B) without prejudice.

An Order of Dismissal will accompany this Memorandum and Order.

Dated this 12th day of January, 2015.

  
\_\_\_\_\_  
CATHERINE D. PERRY  
UNITED STATES DISTRICT JUDGE